

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1129

AN ACT to amend the Indiana Code concerning natural and cultural resources and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 14-8-2-53 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 53. "Conservation officer" for purposes of ~~IC 14-9-8~~, has the meaning set forth in ~~IC 14-9-8-1~~; **refers to an officer employee of the law enforcement division organized under IC 14-9-8.**

SECTION 2. IC 14-21-1-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. As used in this chapter, "artifact" means:

(1) **a feature that is:**

(A) **nonportable evidence of past human behavior or activity;**

(B) **found on or in the ground, including structural remains; and**

(C) **formed before December 31, 1870; or**

(2) **an object made, or shaped by human modified, or used workmanship before December 11, 1816-31, 1870.**

SECTION 3. IC 14-21-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. (a) As used in this chapter, "burial ground" means ground in which human remains are buried, **including the surrounding area that is either:**

(1) **marked by a permanent visible boundary, including a**

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fence or wall; or

(2) if there is not a permanent visible boundary, determined by the department based on records or surveys of the land containing the historic or prehistoric site in which human remains, mounds, or burial objects are reported to occur.

(b) The term includes the following:

(1) The land associated with or incidental to the burial of human remains.

(2) Subject to section 1 of this chapter, historic cemeteries or land with human remains buried before January 1, 1940.

SECTION 4. IC 14-21-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. (a) As used in this chapter, "plan" refers to:

- (1) an archeological plan, as described in subsection (b); or
- (2) a development plan, as described in subsection (c).

(b) As used in this chapter, "archeological plan" means a plan for the systematic recovery, analysis, and disposition by scientific methods of material evidence and information about the life and culture in past ages.

(c) As used in this chapter, "development plan" means:

- (1) a plan for the erection, alteration, or repair of any structure; or**
- (2) a plan for the excavation or the covering of any ground related to construction.**

SECTION 5. IC 14-21-1-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 24. (a) As used in this section, "agricultural purpose" includes farming, dairying, pasturage, agriculture, horticulture, floriculture, viticulture, ornamental horticulture, olericulture, pomiculture, animal husbandry, and poultry husbandry.

(b) Sections 25, 26, 28, and 29 of this chapter do not apply to the following:

- (1) Surface coal mining regulated under IC 14-34.
- (2) Cemeteries and human remains subject to IC 23-14.
- (3) Disturbing the earth for an agricultural purpose.
- (4) Collecting any object other than human remains that is visible in whole or in part on the surface of the ground, regardless of the time the object was made or shaped.

(5) Qualified professional archeologists, as determined by the department, who conduct phase 1a archeological surveys according to guidelines adopted by the department.

SECTION 6. IC 14-21-1-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 25. (a) The commission

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shall adopt rules establishing standards for plans.

(b) With respect to archeological plans, the rules must impose a standard of conduct that does the following:

- (1) Promotes the scientific investigation and conservation of past cultures.
- (2) Considers the interests and expertise of amateur archeologists and professional archeologists.

(c) With respect to development plans, the rules must impose a standard of conduct that preserves and protects both of the following:

- (1) The rights and interests of landowners.
- (2) The sensitivity of human beings for treating human remains with respect and dignity, as determined by the commission.

(d) **Subject to subsection (e)**, plans required under this chapter must be submitted to the department for approval according to rules adopted by the commission.

(e) Proposed plans submitted to the department must be:

- (1) approved;**
- (2) denied; or**
- (3) held because of the need for additional information;**

by the department not more than sixty (60) days after the date of submission. If the department does not take any action on the plan within the time required by this subsection, the plan is considered to be approved, unless approval is prohibited under a state or federal law. If the department requests additional information under subdivision (3), the department shall approve or deny the resubmitted plan not more than thirty (30) days after the resubmitted plan is received.

SECTION 7. IC 14-21-1-26 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 26. (a) A person who disturbs the ground for the purpose of discovering, **uncovering, or moving** artifacts, ~~or~~ burial objects, **or human remains** must do so in accordance with a plan approved by the department under section 25 of this chapter or under IC 14-3-3.4-14 (before its repeal).

(b) A person who recklessly, knowingly, or intentionally violates this section commits **the following**:

- (1) A Class A misdemeanor, if the violation does not involve disturbing human remains.**
- (2) A Class D felony, if the violation involves disturbing human remains.**

SECTION 8. IC 14-21-1-26.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 26.5. (a) Notwithstanding IC 23-14-44-1, this section does not apply to the

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following:

- (1) A public utility (as defined in IC 8-1-2-1(a)).
- (2) A corporation organized under IC 8-1-13.
- (3) A municipally owned utility (as defined in IC 8-1-2-1(h)).
- (4) A surface coal mining and reclamation operation permitted under IC 14-34.

(b) Except as provided in this subsection ~~and subsection (b); subsections (c) and subsection (c); (d)~~, a person may not disturb the ground within one hundred (100) feet of a burial ground ~~or cemetery~~ for the purpose of ~~excavating or covering over the ground or~~ erecting, altering, or repairing any structure without having a development plan approved by the department under section 25 of this chapter or in violation of a development plan approved by the department under section 25 of this chapter. The department must review the development plan ~~not later than sixty (60) days after the development plan is submitted; as required by section 25(e) of this chapter.~~

~~(b)~~ **(c)** A development plan:

- (1) must be approved if a person intends to:
 - (A) excavate or cover over the ground; or**
 - (B) construct a new structure or alter or repair an existing structure;**
 that would ~~significantly~~ impact the burial ground or cemetery; and
- (2) is not required if a person intends to:
 - (A) excavate or cover over the ground; or**
 - (B) erect, alter, or repair an existing structure;**
 for an incidental or existing use that would not impact the burial ground or cemetery.

~~(c)~~ **(d)** A development plan for a governmental entity to disturb ground within one hundred (100) feet of a burial ground ~~or cemetery~~ must be approved as follows:

- (1) A development plan of a municipality requires approval of the executive of the municipality and does not require the approval of the department. However, if the burial ground or cemetery is located outside the municipality, approval is also required by the executive of the county where the burial ground or cemetery is located. A county cemetery commission established under IC 23-14-67-2 may advise the executive of the municipality on whether to approve a development plan.
- (2) A development plan of a governmental entity other than:
 - (A) a municipality; or
 - (B) the state;

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requires the approval of the executive of the county where the governmental entity is located and does not require the approval of the department. However, if the governmental entity is located in more than one (1) county, only the approval of the executive of the county where the burial ground or cemetery is located is required. A county cemetery commission established under IC 23-14-67-2 may advise the county executive on whether to approve a development plan.

(3) A development plan of the state requires the approval of the department.

(e) If a burial ground is within an archeological site, an archeological plan is required to be part of the development plan.

~~(d)~~ **(f)** A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor. However, the offense is a Class D felony if the person disturbs buried human remains or grave markers while committing the offense.

SECTION 9. IC 14-21-1-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 27. (a) A person who disturbs buried human remains **or burial grounds** shall do the following:

(1) Notify the department within two (2) business days of the time of the disturbance.

(2) Treat or rebury the human remains in a manner and place according to rules adopted by the commission or a court order and permit issued by the state department of health under IC 23-14-57.

(b) A person who recklessly, knowingly, or intentionally violates this section commits a Class A misdemeanor.

SECTION 10. IC 14-21-1-28 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 28. A person who ~~with the intent to disturb ground for the purpose of discovering or removing artifacts, burial objects, grave markers, or human remains, disturbs buried~~ **recklessly, knowingly, or intentionally disturbs** human remains or grave markers **while moving, uncovering, or removing artifacts or burial objects** either:

(1) without a plan approved by the department under:

(A) section 25 of this chapter; or

(B) IC 14-3-3.4-14 (before its repeal); or

(2) in violation of such a plan;

commits a Class D felony.

SECTION 11. IC 14-21-1-29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 29. (a) A person who

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discovers, **uncovers, or moves** an artifact or burial object while disturbing the ground for a purpose other than the discovery, **uncovering, or moving** of artifacts or burial objects shall do the following:

(1) Immediately cease disturbing the ground **and the area within one hundred (100) feet of the artifact or burial object.**

(2) Notify the department within two (2) business days after the time of the disturbance.

(b) After notification under subsection (a), the department may do any of the following:

(1) Authorize the person to continue the ground disturbing activity, with or without conditions.

(2) Require that continued ground disturbance activity be conducted only in accordance with an approved plan. However, this subdivision does not apply after ~~thirty (30)~~ **ten (10)** business days from the date that the department receives notice.

(c) A person who violates subsection (a) commits a Class A infraction.

SECTION 12. IC 14-21-1-32 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 32. (a) Subject to subsections (b) and (c), the division may keep reports and information concerning the location of historic and archeological sites confidential if the director of the division determines that disclosure would likely:**

(1) risk harm to the historic or archeological site;

(2) cause a significant invasion of privacy; or

(3) impede the use of a traditional religious site by practitioners.

(b) The division may not disclose to the public reports and information required to be confidential under federal law.

(c) If the director of the division determines that reports and information should be confidential under subsection (a), the director of the department, in consultation with the director of the division, shall determine who may have access to the confidential reports and information.

SECTION 13. IC 14-21-1-33 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 33. An employee of the division or a person authorized by the department may accompany a conservation officer on public or private property to determine if there is a violation of this article.**

SECTION 14. IC 14-21-1-34 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2008]: **Sec. 34. (a) The division may conduct a program to assist private homeowners who have accidentally discovered an artifact, a burial object, or human remains and who need assistance to comply with an approved plan to excavate or secure the site from further disturbance. The division may conduct the program alone or by entering into an agreement with any entity that the division selects.**

(b) In conducting a program under subsection (a), the division may receive gifts and grants under terms, obligations, and liabilities that the director of the division considers appropriate. The director shall use a gift or grant received under this subsection:

(1) to carry out subsection (a); and

(2) according to the terms and obligations of the gift or grant.

(c) The auditor of state shall establish the archeology preservation trust fund to hold money received under subsection (b).

(d) The director of the division shall administer the archeology preservation trust fund. The expenses of administering the fund shall be paid from money in the trust fund.

(e) The treasurer of state shall invest the money in the archeology preservation trust fund that is not currently needed to meet the obligations of the fund in the same manner as other public trust funds may be invested. The treasurer of state shall deposit in the fund the interest that accrues from the investment of the fund.

(f) Money in the archeology preservation trust fund at the end of a state fiscal year does not revert to the state general fund. There is annually appropriated to the division the money in the archeology preservation trust fund for the division's use in carrying out the purposes of this section.

(g) The division may adopt rules under IC 4-22-2 to govern the administration of this section.

SECTION 15. IC 14-21-1-35 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2008]: **Sec. 35. (a) In addition to:**

(1) a:

(A) sentence imposed under this chapter for a felony or misdemeanor; or

(B) judgment imposed under this chapter for an infraction; and

(2) an order for restitution to a victim;

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a court may order an individual to make restitution to the archeology preservation trust fund established under section 34 of this chapter for the division's costs incurred because of the offense committed by the individual.

(b) In ordering restitution under this section, the court shall consider the following:

- (1) The schedule of costs submitted to the court by the division.
- (2) The cost to the property owner to restore or repair the damaged area of an archeological site or burial ground and place the property in the property's original condition as nearly as practicable.
- (3) The amount of restitution that the individual is or will be able to pay.

(c) The court shall immediately forward to the division a copy of an order for restitution made under this section.

SECTION 16. IC 14-21-1-36 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 36. A person who knowingly or intentionally receives, retains, or disposes of an artifact, a burial object, or human remains obtained in violation of this chapter commits possession of looted property, a Class D felony. However, the offense is a Class C felony if the fair market cost of carrying out a scientific archeological investigation of the area that was damaged to obtain the artifact, burial object, or human remains is at least one hundred thousand dollars (\$100,000).**

SECTION 17. IC 14-22-40-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. As used in this chapter, "law enforcement officer" has the meaning set forth in IC 35-41-1-17. The term includes a conservation officer. ~~(as defined in IC 14-9-8-1).~~

SECTION 18. IC 23-14-57-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 4. This chapter does not apply to the **following**:

- (1) **The** disinterment, disentombment, or disurnment of remains upon the written order of the coroner of the county in which the cemetery is situated.
- (2) **The removal of human remains under a plan approved by the division of historic preservation and archeology under IC 14-21-1.**

SECTION 19. IC 14-9-8-1 IS REPEALED [EFFECTIVE JULY 1, 2008].



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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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